

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 16th July, 2012

+ **LPA No.205/2012**

% **GENERAL MANAGER FINANCE
AIR INDIA LTD & ANR**

....Appellants

Through: Mr. Ravi Gupta, Sr. Adv. with Mr.
Mukesh Kumar.
Ms. Meenakshi Sood and Ms. Tanu
Priya, Advs.

Versus

VIRENDER SINGH

..... Respondent

Through: Mr. Anshu Mahajan and Mr. Karan
Arora, Advs.

CORAM :-

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

JUDGMENT

RAJIV SAHAI ENDLAW, J

1. This intra court appeal impugns the order dated 28th November, 2011 of the learned Single Judge allowing WP(C) No. 2143/2011 preferred by the respondent. The said writ petition was preferred impugning the order dated 9th March, 2010 of the Central Information Commission (CIC) upholding the order of the Information Officer and the First Appellate Authority of the appellant Air India refusing to furnish the information sought by the

respondent under the provision of the Right to Information Act, 2005 on the ground of the same being exempted under Section 8(1)(d) of the said Act.

2. The respondent had vide application dated 17th November, 2008 sought the following information:

- “1. Were free complimentary air tickets, by whatever name called, issued by the erstwhile Air India Limited during the period 01.01.2006 to 31.12.2006.
2. In case answer to Question No.1 is affirmative, then the number of such tickets issued during the period 01.01.2006 to 31.12.2006 and who authorized/sanctioned these air tickets? What were the rules/regulations in this regard? Please also furnish a copy of relevant rules/regulations for the said period.
3. In case answer to Question No.1 is affirmative, then please furnish details of such free complimentary air tickets allowed during the period in the following format, therein date on which and station for which free air tickets were allowed and the names and addresses of the persons to whom air tickets were allowed.

<u>Serial No.</u>	<u>Date</u>	<u>Station</u>	<u>Name and address of the persons to whom free tickets were allowed.</u>
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4. Were free complimentary air tickets, by whatever name called, allowed on recommendations made by officers/administration of the erstwhile Indian Airlines Ltd. during the period 01.01.2006 to 31.12.2006?

5. In case answer to Question No.1 is affirmative, then please furnish details of such free air tickets allowed during the above period in the following format, giving therein date on which and station for which air tickets were allowed, the names and addresses of the persons to whom air tickets were allowed and Names and Designation of the officers who made the recommendations.

<u>Serial No.</u>	<u>Date</u>	<u>Station</u>	<u>Name and address of the person</u>	<u>Name and designation of the officer”</u>
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3. Upon the Information Officer of the appellant Air India in response thereto, referring the respondent to replies given to other similar queries, the respondent approached the First Appellate Authority. Under the direction of the First Appellate Authority, the Information Officer of the appellant Air India responded as under:

- “1) Like all other airlines complimentary tickets are given by Air India for commercial Interest and to encourage and promote travel on our flights and to help in image building of the airline.
- 2) Approx. 1200 complimentary tickets were issued in 2006 by erstwhile Air India. The number of tickets allocated to the regions are authorized by the Commercial Director.

3) The disclosure of names of persons to whom such tickets were issued would be detrimental to the commercial interests of the company considering the fierce level of competition that is existing in the Aviation Industry. Also such information is exempted from disclosure under Section 8(1)(d) of RTI Act 2005 and the same is therefore being denied.”

4. Aggrieved therefrom, the respondent preferred the appeal directly to the CIC. The CIC however was of the opinion that the commercial interest of the appellant Air India may be affected by the disclosure of the details of the complementary tickets and invoking Section 8(1) (d) of the RTI Act upheld the denial of information. It was however further observed that the rules/regulations regarding complimentary tickets were not exempted under the RTI Act and the appellant Air India was as such directed to provide copy of rules/ regulations for issuing complimentary tickets.

5. The respondent being still unsatisfied, filed the writ petition from which this appeal arises. The learned Single Judge observed that Section 8(1)(d) deals with information which is of commercial confidence or trade secrets or intellectual property, the disclosure of which would harm the competitive position of a third party; it was held that the information sought by the respondent did not pertain to a third party; rather it pertains to the public authority itself and identity of persons to whom complimentary

tickets are issued by the appellant Air India does not constitute information which can be said to be of commercial confidence or a trade secret and certainly does not constitute an intellectual property. While upholding the right of the appellant Air India to, in the course of its operations and for good reasons issue complementary tickets for promotion of its commercial interest, it was held that there is no reason to be secretive about the persons to whom such complementary tickets are issued. It was further held that the appellant had been unable to explain as to how the disclosure of the identity of these persons would harm the commercial interest of the appellant. Accordingly the writ petition was allowed and the appellant Air India directed to disclose the names of the persons to whom complementary tickets were issued in the year 2006.

6. Notice of this appeal was issued. Vide order dated 14th May, 2012, the appellant was directed to produce information in respect of question No.3 (supra) in a sealed cover. The counsel for the appellant has today handed over a sealed cover. Though it is the contention of the appellant that out of the approximately 44 lakhs tickets sold in the year 2006, only a miniscule number of 1200 complementary tickets were issued but the list which has been shown to us comprises of only 706 names. Further, the said

list only gives the name of the person to whom complementary ticket was issued and the station from which it was issued. The address or other particulars of the beneficiaries of the said complementary tickets or the date also are not mentioned. The senior counsel for the appellant states that the particulars of the remaining complementary tickets are now not available with the appellant Air India. We have heard the counsels.

7. The resistance by the appellant to the disclosure sought is on the ground of the same amounting to letting out the trade secrets and trade contacts of the appellant and of which the competitor Airlines may take advantage. It is argued that if particulars of the persons on whom the appellant has bestowed these freebies or favour by issuance of complementary tickets are disclosed, the said persons who are vital to the commercial interest of the appellant may be won over by the competitor Airlines.

8. Though the appellant has sought to invoke the clause (d) of Section 8(1) of the RTI Act, which exempts from disclosure 'information including commercial confidence, trade secrets or intellectual property, the disclosure of which would harm the competitive position of a third party' but without any pedestal whatsoever. Though the CIC had directed the appellant to

furnish to the respondent the rules regarding issuances of such complementary tickets and the basis thereof but the appellant has not placed before us any such rules showing that such complementary tickets are to be given only to those who help the appellant in advancing its business interest. What we have thus before us is a bold plea without anything more to show that the information as to particulars of beneficiary of complementary tickets from the appellant is of commercial confidence to the appellant.

9. The RTI Act, as per its preamble was enacted to enable the citizens to secure access to information under the control of public authorities, in order to promote transparency and accountability in the working of every public authority. An informed citizenry and transparency of information have been spelled out as vital to democracy and to contain corruption and to hold Governments and their instrumentalities accountable to the governed. The said legislation is undoubtedly one of the most significant enactments of independent India and a landmark in governance. The spirit of the legislation is further evident from various provisions thereof which require public authorities to:

A. Publish *inter alia*:

i) the procedure followed in the decision making process;

- ii) the norms for the discharge of its functions;
- iii) rules, regulations, instructions manuals and records used by its employees in discharging of its functions;
- iv) the manner and execution of subsidy programmes including the amounts allocated and the details of beneficiaries of such programmes;
- v) the particulars of recipients of concessions, permits or authorizations granted. [see Section 4(1) (b), (iii), (iv), (v); (xii) & (xiii)].

B. *Suo moto* provide to the public at regular intervals as much information as possible [see Section 4(2)].

10. The exemption from disclosure provided for in Section 8 has to be seen in the said light. Section 8 is an exception to the otherwise regime of transparency and disclosure brought about by the Act. Naturally, the exemption cannot be allowed merely on the ground thereof being raised. It is for the public authority claiming exemption to lay foundation, of the information falling in one of the exempted categories. We are afraid, the appellant has not laid any such foundation. Even in the list handed over to us, there is nothing to show that there is any confidentiality attached thereto. In fact, recognizing some of the names in the list we ourselves are curious to know the reasons for the appellant to have bestowed largesse of complimentary tickets on them. Even otherwise we find the plea raised by

the appellant, of Section 8(1) (d), to be a bogey. Though the appellant, for several decades enjoyed a monopoly as far as the Indian skies were concerned, but now undoubtedly has competition. Though earlier the appellant may not have felt the need to advertise to lure the customers but now the appellant as well as the other airlines are advertising to the public at large their fares and various schemes promoted by them from time to time to attract business. The senior counsel for the appellant during the argument has generally stated that the complimentary tickets may have been given by the appellant to its frequent flyers. The details of the said frequent flyers programmes of different airlines are also available on the internet at the click of a button. It is also a known fact that a large proportion of booking of airline tickets is either through agents or via internet; the information with respect to the patrons of the appellant is thus likely to be widely available. The appellant before us as aforesaid, has not laid any basis whatsoever of their being any confidentiality of its patrons.

11. Judicial notice can be taken of the huge influx from time to time of public funds, on the crutches whereof the appellant Air India is functioning. It is even otherwise not disputed that it is a public authority. The issuance of complementary tickets by the appellant is thus obviously at the expense of

the public exchequer. We are not impressed with the argument of, the said complementary tickets representing a miniscule proportion of the total number of tickets sold by the appellant. Even otherwise it is not disclosed as to what monetary value the said 1200 tickets represent. The question is not of whether the issuance of complementary tickets without any reason is of a small or of a large amount. The public funds even of a small amount cannot be allowed to be wasted and no public official, as the employees , officers of the appellant are, are authorized to meet/dole out personal favour at the cost of public funds.

12. We are therefore in agreement with the learned Single Judge that the information sought is not exempted under Section 8(1) (d) of the Act.

13. Though the appellant has also sought to aver that the names of the beneficiaries of such complementary tickets cannot be disclosed without their consent but we fail to see how. The third party procedure prescribed in Section 11 of the Act is applicable only qua the information supplied by the said third party. The beneficiary of a complementary ticket has not supplied any information and has rather availed of an advantage at public cost and which also as per the appellant is for commercial considerations.

14. The counsel for the appellant lastly contend that the direction to supply information be confined to the list of 706 complementary tickets issued only. The counsel for the respondent information seeker opposes. He states that the appellant as per the law is required to maintain the records for eight years and the information was sought within two years and since the proceedings were pending could not have been destroyed. It is further urged that the appellant has not even cared to state on affidavit that the remaining information is not available.

15. In the circumstances, while dismissing this appeal, we direct that subject to the appellant within one week filing an affidavit in this Court with advance copy to the respondent that the information qua the remaining complementary tickets issued in the year 2006 has been destroyed and is not available, the direction for supply of information of the said year shall be confined to 706 complementary tickets only. We refrain ourselves from imposing any cost on the appellant.

RAJIV SAHAI ENDLAW, J

ACTING CHIEF JUSTICE

JULY 16, 2012/‘M’